IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA
RFA Nos.329, 330, 332, 333, 334 and 335 of 1997.
Judgment Reserved on: 09.05.2007.
Date of decision:21.05.2007

For title: Please see over-leaf

Coram

The Hon'ble Mr.Justice Dev Darshan Sud,J.

Whether approved for reporting ?[1]

RFA No.330 of 1997.

For the Appellant(s): **Mr.Virender Verma, Additional Advocate General.**

For the Respondent(s): **Mr.Bhupender Gupta,Senior Advocate with Mr.Neeraj Gupta, Advocate.**

RFA Nos.329, 332, 333, 334 & 335 of 1997.

For the Appellant(s): **Mr.Virender Verma, Additional Advocate General.**

For the Respondent(s): **Mr.Raman Sethi, Advocate.**

Dev Darshan Sud,J.

These appeals are being disposed of by a common judgment as they involve common questions of law and fact. They arise out of the judgment which has been passed by the learned District Judge in Land Reference case Nos. 1-S/4, 2-S/4, 3-S/4, 4-S/4, 5-S/4 and 6-S/4 of 1996 under Section 18 of the Land Acquisition Act (hereinafter referred to as the "Act"). The State acquired the land of the petitioners which is situated near the Rohru Bazar in the year 1993 for construction of a Stadium-cum-Helipad. For this purpose a

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgement?***

1. **RFA No.329 of 1997.**

LAC & Another ….Appellants

Versus

Smt.Subdhi & Others ….Respondents

2. **RFA No.330 of 1997.**

LAC & Another ….Appellants

Versus

Sh.Balwan Singh & Others ….Respondents

3. **RFA No.332 of 1997.**

LAC & Another ….Appellants

Versus

Smt.Jalmi & Others ….Respondents

4. **RFA No.333 of 1997.**

LAC & Another ….Appellants

Versus

Sh.Daya Nand & Others ….Respondents

5. **RFA No.334 of 1997.**

LAC & Another ….Appellants

Versus

Sh.Malwar & Others ….Respondents

6. **RFA No.335 of 1997.**

LAC & Another ….Appellants

Versus

Sh.Jhala Ram & Others ….Respondents

Notification under Section 4 of the Land Acquisition Act, 1894 was published on 18.9.1993. The possession is stated to have been taken in July, 1984 and the award was announced on 14.12.1995. A reference under Section 18 of the Act was preferred before the learned District Judge for enhancement of the compensation. The learned District Judge, considering the totality of the evidence of the parties, enhanced the compensation and awarded a sum of Rs.23,440/- per biswa in respect of the acquired land. Further while considering the case of the petitioners for grant of interest under Section 23(1-A), interest was awarded @ 12% per annum w.e.f.1.7.1984 till 14.12.1995 and 9% interest per annum for one year w.e.f. 1.7.1984 to 30.6.1985 and thereafter @ 15% per annum till the enhanced amount of compensation is deposited in Court. The interest was awarded from the date of taking possession of the land which was held to be 1.7.1984.

The State has challenged the award on various grounds. The learned Additional Advocate General submitted that the learned Reference Court was not correct in determining the compensation at the rate at which it has been awarded. For this purpose, he made a reference to the evidence on record to substantiate his submissions that the learned Reference Court had not applied the correct principles nor followed the law applicable. Two witnesses, namely; RW-1 Mohan Singh who was the Field Kanungo, Rohru and RW-2, Rajinder Singh, Patwari of Rohru Circle, have been produced. Ex.R-1 was

produced to show the average sale price of the land from 1.9.1992 to 31.8.1993. The evidence of this witness cannot be accepted for the reasons that the document is not authenticated. It is an extracted photocopy of some document and this witness in cross examination admits that he has not seen any of the registered sale deeds, which, according to this witness, form the basis of the value of the land as shown in Ex.R-1. He also admits that even the record of the Registration Authority was not consulted. RW-2 is on no better footing and his evidence does not lead it to the conclusion that he has proved the case of the plaintiff. He also produced an unauthenticated photocopy which does not establish the value of the acquired land. In the circumstances, I cannot accept the contention of the learned Additional Advocate General that the learned Reference Court has come to a wrong conclusion in calculating the compensation payable to the claimants. Learned Court has also taken notice of the fact that the land is situated in the Notified Area Committee of Rohru Town. The totality of the evidence can lead to no other conclusion except that the fair market price has been awarded to the claimants. The submission of the learned Additional Advocate General to the contrary is rejected.

It was submitted that the learned Reference Court was not correct in awarding interest under Sections 23(1-A) and 28 of the Act from the date of taking of possession of the land which, according to the

learned trial Court, was July, 1984. I am in agreement with the submissions made by the learned Additional Advocate General.

The matter regarding grant of interest under Sections 23(1-A) and 28 of the Act was a subject matter for consideration of this Court in ***Narotam Ram and Others*** *vs.* ***Land Acquisition Collector and Others, 2002(3) Shim.L.C.45.*** The matter has been considered by the Full Bench thus:-

> *"The following points are referred to this larger Bench of three Judges:-*
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> *(i) If in a given case the actual possession of the acquired land is taken before the date of Notification under Section 4 of the Act or from the date of taking possession under Section 16 or 17 of the Act, whether the claimant is entitled to additional compensation under Section 23(1-A) of the Act from the date of taking actual possession or from the date of notification under Section 4 of the Act?*
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> *(ii) Whether the interest under Section 28 of the Act is to be paid from the date the possession taken under Section 16 or 17 of the Act?*
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> *2. So far first point of reference is concerned, it is no longer res integra. The learned Judges of the Supreme Court in Siddappa Vasappa Kuri and another v.Special*

Land Acquisition Officer and another, (2002) 1 SCC 142, while interpreting the `expression whichever is earlier in Section 23(1-A) of the Act' have held in para 6:

"…… the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award……."

And further in para 7:

"Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted. Having regard to its clear terms, Section 23(1-A) must receive the only construction it can bear….."

3. The learned Judges have approved their earlier decision in Special Tahsildar (LA), P.W.D. Schemes v.M.a. Jabbar, (1995) 2 SCC 142. In the said judgment the learned Judges have said: (SCC p.144, para 3).

"In other words, the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession, the Act intended that the owner be compensated by awarding an additional amount calculated at the rate of 12 per centum per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Admittedly, possession having already been taken on 15.2.1965, before publication of the notification under Section 4(1) on 6.3.1980, the award of additional amount for the period from 6.3.1980, the award of additional amount for the period from 6.3.1980, to 30.9.1983, i.e., the date of making the award under Section 11 is perfectly correct."

Therefore, in view of the ratio of above judgment it is finally settled that additional compensation under Section 23(1-A) of the Act is payable from the date of notification under Section 4 of the Act and not from the date of taking actual possession up to the date of award or date of taking

possession under the Act, whichever is earlier.

24. *… … … … … … … … our answer to reference No.(ii) is that the interest under Section 28 of the Act is to be paid from the date the possession is taken over under the Act, which in no case can be before issuance of notification under Section 4 of the Act."*

The appeals of the State are accepted to the extent that the award of interest which has been made under Sections 23 (1-A) and 28 of the Act will be payable only from the date of the Notification under Section 4 of the Act in terms of the judgment of this Court in ***Narotam Ram's*** case (supra) and not from the date of possession as held by the learned District Judge. No other point has been urged before me. The judgment and decree of the learned Reference Court is modified to this extent. The parties are left to bear their own costs.

The Registrar Inspection will determine the amount payable to the parties and in case excess amount has been realized by the claimants-respondents, the same shall be refunded to the State within a period of eight weeks from today. The Registrar Inspection will hear both the parties before passing any order.

May 21, 2007 **(Dev Darshan Sud)**
(aks) **Judge.**